

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY DEAN WEATHERMAN,

Petitioner,

v.

RON HAYNES,

Respondent.

CASE NO. 3:20-CV-06087-JLR-DWC

ORDER

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. The Court has reviewed the Amended Petition (hereinafter “Petition”), Respondent’s Answer to the Petition and relevant state court record, Petitioner’s Response to the Answer, and Respondent’s Reply. *See* Dkt. 7, 9, 10, 11, 12.

In the Answer, Respondent argues the Petition is time-barred and Petitioner has not shown he is entitled to equitable tolling or he is actually innocent. Dkt. 9. In the Response, Petitioner argues for the first time he is actually innocent based on testimony from a witness,


1 Melissa Porter.¹ Dkt. 11 at 6. In the Reply, Respondent addresses Plaintiff's actual innocence
 2 argument. Dkt. 12. Respondent submits, for the first time, trial transcripts showing Ms. Porter
 3 testified at trial but arguing this evidence does not show Petitioner is actually innocent based on
 4 new reliable evidence not presented at trial to excuse the timeliness of the Petition. Dkt. 12
 5 (citing *Schlup v. Delo*, 513 U.S. 298, 324 (1995)).

6 As Respondent addressed Petitioner's actual innocence argument for the first time in the
 7 Reply and submitted additional trial transcripts, Petitioner did not have an opportunity to
 8 respond.² The Court, therefore, finds it appropriate to allow Petitioner to file a supplemental
 9 response.

10 Accordingly, Petitioner may file a supplemental response on or before March 26, 2021.
 11 Petitioner's supplemental response should be no more than five (5) pages in length and shall
 12 respond only to Respondent's assertion that Petitioner is not actually innocent. Respondent may
 13 file a supplemental reply to Petitioner's supplemental response on or before April 2, 2021.
 14 Respondent's supplemental reply should be no more than five (5) pages in length and shall
 15 respond only to Petitioner's supplemental response.

16 The Clerk is directed to re-note the Petition (Dkt. 7) for consideration on April 2, 2021.

17 Dated this 18th day of February, 2021.

18 

19 _____
 20 David W. Christel
 21 United States Magistrate Judge

22 _____
 23 ¹ In the memorandum attached to the Petition, Petitioner references Ms. Porter, but does not frame his
 argument as alleging actual innocence. *See* Dkt. 7 at 52-53.

24 ² In submitting the state court record, Respondent indicated he had received the trial transcripts but did not
 believe they were relevant at that time. *See* Dkt. 10 at 3.